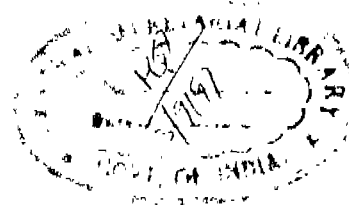




भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY



सं० 1] नई दिल्ली, शुक्रवार, फरवरी 21, 1997 / फाल्गुन 2, 1918
No. 1] NEW DELHI, FRIDAY, FEBRUARY 21, 1997 / PHALGUNA 2, 1918

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 21st February, 1997:—

I

BILL No. XLIX OF 1996

A Bill further to amend the Payment of Bonus Act, 1965.

BE it enacted by Parliament in the Forty Seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Payment of Bonus (Amendment) Act, 1996.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, in consultation with the State Governments, by notification in the Official Gazette, appoint.

21 of 1965.

2. In section 11 of the Payment of Bonus Act, 1965 (hereinafter referred to as the Principal Act), in sub-section (1), the words "subject to a maximum of twenty per cent. of such salary or wage" shall be omitted.

3. In section 12 of the Principal Act, for the words "as if his salary or wages were one thousand and six hundred rupees per mensem" the words "ignoring his salary or wage level" shall be substituted.

Short title,
extent and
commence-
ment.

Amendment
of section 11.

Amendment
of section 12.

Amendment of
section 15.

4. In section 15 of the Principal Act,—

(a) in sub-section (1), the words “subject to a limit of twenty per cent. of the total salary or wage of the employees employed in the establishment in that accounting year,” shall be omitted.

(b) sub-section (2) shall be omitted.

Amendment of
section 32.

5. In section 32 of the Principal Act, clause (iv) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Government of India had rightly decided to delink bonus from profitability and enacted the law to make payment of bonus by establishments/enterprises. Initially payment of bonus was to be made to certain category of workers but over the time, changes were made in the Act and ceilings were introduced for the purpose of eligibility for bonus. In keeping with the changes in the situation, this government was kind enough to waive the ceiling further and granted bonus to all categories of 'C' & 'D' staff in the government sector as well as to Port and Dock workers. But till now no substantial step, to extend similar relief to workers and employees engaged in business enterprises, was made and thus vast number of toiling people were left from enjoying the relief granted by the govt. to the same section of employees. As the concept of bonus is no longer linked with profitability, set-off of allocable surplus for the next year/years also became out dated and so also the provision for ceiling at 20%. It should now be left to the bargaining capacity of the employees and employers to arrive at the quantum of bonus. If the profit is more, the establishment need not hesitate to pay more bonus and, therefore, should be allowed to reach an agreement with the employees. This will also give enough incentive to employees to increase their working efficiency and the country will gain from such increased output.

To achieve all these, the Bill.

E. BALANANDAN.

II

BILL NO. L OF 1996

A Bill to provide for the establishment of a permanent Bench of the High Court of Karnataka at Hubli.

BE it enacted by Parliament in the Forty-seventh Year of the Republic of India as follows:—

Short title.

1. This Act may be called the High Court of Karnataka (Establishment of a Permanent Bench at Hubli) Act, 1996.

Establishment
of a permanent
Bench of High
Court of
Karnataka at
Hubli.

2. There shall be established a permanent Bench of the High Court of Karnataka at Hubli and such judges of the High Court of Karnataka being not less than five in number, as the Chief Justice of that High Court may from time to time nominate, shall sit at Hubli in order to exercise the jurisdiction and power for the time being vested in that High Court in respect of cases arising in the district of Hubli and adjoining areas of the other districts of Karnataka.

STATEMENT OF OBJECTS AND REASONS

Geographically, Karnataka is one of the largest States of the Indian Union having large population for whom dispensation of justice is also needed. But unfortunately the distance from Bangalore to Hubli is so much that the litigent Public in the northern Karnataka are put to great hardship. Hence the need to set up a bench in Hubli.

Hence, it is necessary that a Bench of the High Court of Karnataka be established at Hubli without further loss of time.

Hence this Bill.

S.M. KRISHNA.

III

BILL No. VI OF 1997

A Bill further to amend the Land Acquisition Act, 1894.

BE it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

Short title.

1. This Act may be called the Land Acquisition (Amendment) Act, 1997.

Amendment
of Act 1 of
1894.

2. In section 18 of the Land Acquisition Act, 1894, for the existing proviso, the following provisos shall be substituted, namely:—

“Provided that every such application shall be made within three years from the date of the receipt of the award if the protest is not made;

Provided also that the person, if, registers protest at any stage of the proceeding before passing of the award for the quantum of compensation, no application need be made to make reference and the matter shall compulsorily be referred to the Court.”

STATEMENT OF OBJECTS AND REASONS

Under the Limitation Act, 1963 time provided for claiming compensation is three years. The existing proviso to sub-section (2) of section 18 of the Land Acquisition Act, 1894 extinguishes the remedy available to the claimant.

Recently section 28 of the Indian Contract Act, 1872 has been amended wherein any agreement which extinguishes the right of any party in a contract shall be void to that effect. Applying the same analogy the extinction of remedy under the existing proviso of section 18 of the Land Acquisition Act, 1894 has to be removed. The proposed amendment will therefore avoid hardships and injustice to the person.

Different judicial pronouncements were rendered by the Supreme Court regarding computation of period of limitation. As per Supreme Court judgement in 1963 limitation starts from the date of receipt of the award by the person. Even without over ruling or making any reference to the judgement of the Supreme Court of 1963 the later judgement by a smaller Bench in 1996 observes that the limitation starts the moment the notice of passing of the award is made known to the party. In view of contradictory pronouncements in the Supreme Court, the Courts are bound to follow the recent judgement and will reject all cases as time barred which will result in far reaching consequences and inexplorable injustice and hardships to the persons who lost their properties.

Hence the Bill.

R. MARGABANDU.

IV

BILL No. V OF 1997

A Bill to provide for the adoption of children and for matters connected therewith and incidental thereto.

BE it enacted by Parliament in the Forty-eighth Year of the Republic of India as follows:—

Short title,
extent and
commence-
ment.

1. (1) This Act may be called the Adoption of Children Act, 1997.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "adoption order" means an order made under section 3 for the adoption of a child;

(b) "child" means a person who on or before the date on which an application for an adoption order in respect of such person is made, has not completed the age of fifteen years;

(c) "district court" means, in any area for which there is a city civil court, that court, and in any other area, the principal civil court of original jurisdiction;

Provided that the Central Government may, by notification in the Official Gazette, empower, subject to such conditions and restrictions as may be specified in the notification, any other civil court to exercise the power and discharge the functions and duties of the district court in respect of all or any of the matters dealt with in the Act and a civil court so empowered shall also be deemed to be a district court for the purposes of this Act in respect of the matters and subject to the conditions and restrictions specified in such notification;

(d) "guardian" means a person having the care of the person of a child;

(e) "institution" means a body of persons licensed as a social welfare institution under the Orphanages and other Charitable Homes (Supervision and Control) Act, 1960;

(f) "Licensing authority" in relation to any State, means the Licensing Authority for Adoption Institutions for that State;

(g) "parent", in relation to an adopted child, means the adoptive parent;

(h) "prescribed" means prescribed by rules made under this Act.

3. Subject to the provisions of this Act, the district court may, upon an application made in the prescribed form and manner by a person for the adoption of a child, make an adoption order in respect of such child.

Power to make adoption orders.

4. No adoption shall be valid unless,—

Requisites of a valid adoption.

(i) the person adopting has the capacity and the right to take in adoption;

(ii) the person giving in adoption has the capacity and the right to do so;

(iii) the person adopted is capable of being taken in adoption;

(iv) the adoption is made in compliance with the other conditions mentioned in the Act.

5. (1) Any person who has completed the age of twenty-five years and is of sound mind may adopt a child under this Act.

Persons who may adopt.

Explanation.—In the case of adoption of a child the requirement as to age under this sub-section shall be deemed to have been satisfied if either of the spouse has completed the age of twenty-five years.

(2) The person or each of the persons seeking to adopt a child shall be older than the child by at least twenty-five years:

Provided that the district court may dispense with the requirements of this sub-section in any case if it is satisfied that there are any special circumstances which render it necessary to do so.

6. Any child who is not already adopted or married may be taken in adoption:—

Persons who may be adopted.

Provided that the district court may permit the adoption of a child who had been adopted earlier in appropriate circumstances.

7. (1) An adoption order in respect of a child shall not be made—

Consent.

(a) in any case, except with the consent of every person who is a parent or guardian of the child; and

10 of 1960.

(b) where the child is in the care of an institution, except with the consent of the institution given on its behalf by the person entrusted with, or in charge of, its management or authorised to so give consent:

Provided that the consent of the father of a child not born in lawful wedlock shall in no case be required in the case of adoption of such child.

(2) The time and the manner in which the consent referred to in sub-section (1) may be given and other matters relating to such consent shall be such as may be prescribed.

Court having jurisdiction to entertain applications.

8. Every application for an adoption order shall be made to the district court having jurisdiction in the place where the child ordinarily resides on the date of the application.

Procedure before the Court.

9. (1) Subject to the provisions of this Act and the rules made thereunder, every application for an adoption order shall be heard and determined by the district court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits and an adoption order made under this Act shall be deemed to be a decree for the purposes of the said Code.

5 of 1908.

(2) The provisions of the Indian Evidence Act, 1872 shall, subject to the provisions of this Act and the rules made thereunder, apply in all respects to the proceedings on such application:—

1 of 1872.

Provided that the district court may receive as evidence any report, statement, document, information or matter that may in its opinion assist it to deal effectively with the application, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872.

1 of 1872.

(3) For the purpose of any application for adoption of a child under this Act and subject to any rules made thereunder, the district court may, if satisfied that it is necessary so to do, appoint an institution within the meaning of this Act to act as guardian *ad litem* of the child upon the hearing of the application with the duty of safeguarding the interests of the child before the court.

Interim orders.

10. (1) Subject to the provisions of this section, the district court may postpone the determination of an application for an adoption order in respect of a child and may, if it considers just and convenient so to do, make an interim order giving the care and custody of the child to the applicant for such period as the court thinks fit by way of a probationary period, upon such terms as regards the provisions for the maintenance and education and the supervision of the interests and welfare of the child and otherwise as the court may think fit.

(2) On the application of any person or authority interested, the district court may in its discretion modify or revoke an interim order in respect of any child on such terms and conditions as the court thinks fit.

Matters to be considered in making adoption orders.

11. (1) The district court, before making an adoption order,—

(a) shall be satisfied that every person or institution whose consent is required under this Act, and whose consent has not been dispensed with, has consented to and understands the nature and effect of the adoption order for which the application has been made and in particular in case of any parent, understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;

(b) shall have regard (among other things) to the health of the applicant and the fitness of the family as regards mental and physical position and the financial status;

(c) shall give due consideration to the wishes of the child, having regard to his or her age and understanding;

(d) shall be satisfied that the order if made, *will be for the welfare of the child*; and

(e) shall be satisfied that the applicant has not received or agreed to receive and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

(2) The district court in making an adoption order may impose such terms and conditions as it may think fit and in particular, may require the adopter by bond or otherwise to make for the child such provision, if any, as in the opinion of the court is just and proper.

12. (1) Any person aggrieved by an order of the district court allowing or dismissing an application for an adoption order may, within thirty days from the date of such order, prefer an appeal to the High Court.

Appeals.

(2) The High Court shall, subject to the provisions of this Act, have the same powers, jurisdiction and authority and follow the same procedure with respect to an appeal under this section as if the appeal were an appeal from an original decree passed by the district court.

13. (1) An adoption order shall take effect retrospectively from the date of applications.

Effect of adoption order.

(2) A child in respect of whom an adoption order is *made shall be deemed to be the child of the adopter* or adopters and the adopter or adopters shall be deemed to be the parent or parents of the child *as if the child had been born to that adopter or those adopters (including intestacy)* with effect from the date on which the adoption order takes effect and on and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption order in the adoptive family.

(3) Notwithstanding anything contained in any other law where the particulars relating to the birth of a child in respect of whom an adoption order is made have been registered under any law relating to registration of births, the officer or other authority for the time being empowered to give certified extracts of such particulars shall, upon an application made by or on behalf of the child and upon being satisfied that the adoption order in respect of the child has taken effect, issue or cause to be issued a certificate of such particulars setting out the names of the adoptive parents in place of the names of the natural parents of the child.

14. (1) The district court,—

(i) upon receiving from any person an application in the prescribed form in this behalf; or

(ii) upon a report by any officer authorised in this behalf by the State Government; or

(iii) upon its own knowledge or information;

Special provision for protection of adopted children.

may by notice, require the parent or guardian of a child apparently under the age of fifteen years, being a child adopted under this Act to produce such child on such day as may be specified in the notice if the court has reason to believe that the child,—

(a) is habitually neglected or subjected to cruel ill-treatment;

(b) lives or is made to live by begging or by any act of a criminal nature;

(c) lives or is made to live in circumstances calculated to cause, encourage or favour the seduction or prostitution of the child;

(d) frequents or is allowed to frequent the company of any prostitute, or of any smuggler; or thief or other criminal; or

(e) has been or is being or is likely to be taken out of India for any immoral purpose or for any purpose detrimental to his welfare and interests.

Explanation.—For the purposes of sub-clause (a), cruel ill-treatment in relation to an adopted child includes any undue discrimination between him and his brothers or sisters in his adoptive family in the manner of care, maintenance, training, education, provision of money or property or in any other matter connected with the physical, material or moral well-being of the child.

(2) On the date fixed for the production of the child under sub-section (1) or on any subsequent date to which the proceedings may be adjourned, the district court may hear and record all evidence which may be adduced and pass such order as in the opinion of the court is just and proper in the circumstances of the case for ensuring the welfare of the child.

(3) The provisions of section 9, shall, so far as may be, apply in respect of proceedings and orders under this section as they apply in respect of proceedings on applications for adoption orders.

(4) The provisions of this section shall be in addition to, and not in derogation of, the provisions of any law for the time being in force providing for the care, protection, maintenance, welfare, training, education and rehabilitation of children.

15. (1) There shall be appointed a Licensing Authority for grant of licence to Adoption Institutions in each state.

Licensing
authority for
Adoption
Institutions.

(2) Every person desiring to establish an institution shall make an application to the licencing Authority in such form and contain such particulars as may be prescribed.

16. (1) Subject to the provisions of this section, it shall not be lawful to make or give to any person any payment or reward for or in consideration of,—

Prohibition of
certain
payments.

(a) the adoption by that person of a child; or

(b) the grant by that person of any consent required in connection with the adoption of a child; or

(c) the transfer by that person of the care and custody of a child with a view to the adoption of a child; or

(d) the making by that person of any arrangements for the adoption of a child.

(2) Any person who makes or gives or agrees or offers to make or give any payment or reward prohibited by this section or who receives or agrees to receive or attempts to obtain any such payment or reward, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both; and the court may order any child in respect of whom the offence has been committed, to be removed to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him.

(3) This section does not apply to any payment made to an institution by a parent or guardian of a child or by a person who adopts or proposes to adopt a child being any payment in respect of expenses reasonably incurred by the institution in connection with the adoption of the child or to any payment or reward authorised by the court to which an application for an adoption order in respect of a child is made.

17. (1) Except with the leave of the court competent to entertain an application for an adoption order in respect of a child, it shall not be lawful for any advertisement to be published indicating,—

Restrictions
upon advertise-
ments.

(a) that the parent or guardian of the child desires to cause the child to be adopted; or

(b) that a person desires to adopt the child; or

(c) that any person (not being an institution) is willing to make arrangements for the adoption of the child.

(2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section shall be punishable with fine which may extend to one thousand rupees.

18. (1) The Central Government may by notification in the Official Gazette, and after consultation with the Supreme Court, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may provide for—

(a) the form and the manner in which an application for an adoption order shall be made;

(b) the time when and the manner in which consent may be given to the adoption of a child and other matters relating to such consent;

(c) the procedure which may be followed on hearing applications by a district court and the circumstances in which and the extent to which such applications may be heard and determined otherwise than in open court;

(d) the care and custody of children awaiting adoption;

(e) any other matter for which provision has to be or may be made by rules.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

19. (1) The Hindu Adoptions and Maintenance Act, 1956, in so far as it relates to adoptions among Hindus, is hereby repealed, that is to say, the said Act shall be amended in the manner specified in the Schedule.

Repeal of Act 78 of 1956 in so far as it relates to adoption among Hindus, etc.

(2) Any custom or usage relating to adoption among members of any community or of any class or sub-class of a community or of any family and in force in the territories to which this Act extends, immediately before the commencement of this Act as part of the law applicable to such community, class, sub-class or family shall cease to have effect as from such commencement, except as respects things done or omitted to be done before such commencement.

20. Nothing contained in this Act shall affect any adoption made before the commencement of this Act, and the validity and effect of any such adoption shall be determined as if this Act had not been passed.

Saving.

THE SCHEDULE

[See section 25 (1)]

1. Long title.—*Omit* "adoptions and".
2. Section 1.—In sub-section (1), omit "Adoptions and".
3. *Omit* Chapter II (sections 5 to 17, both inclusive).
4. *Omit* section 30.

STATEMENT OF OBJECTS AND REASONS

In India there is no general law of adoption though it is permitted by statute amongst Hindus and by custom amongst some other communities. In recent years there has been a growing demand for a general law of adoption in India for enabling any person irrespective of his religion, race or caste to adopt a child. This becomes important as non-Hindus can merely be guardians of the children under the Guardianship and Wards Act, 1890 and cannot adopt the children. Several social welfare organisations and social workers who see in the institution of adoption an opportunity to provide proper homes and families for abandoned destitute and neglected children have been persistently requesting the Government to enact such legislation. The basis of this demand lies embedded in Article 39 of the Constitution which provides, *inter alia*, that the State shall direct its policy towards securing that childhood and youth are protected against exploitation and against material and moral abandonment. This Bill seeks to meet this demand. Further, it becomes important to provide for the protection of the children who are adopted against their exploitation and to curb certain malpractices that might vitiate the whole process of adoption.

2. The salient features of the Bill to achieve the above objectives may be stated as follows:—

- (a) The Bill seeks to provide for an *enabling law of adoption* which enables anyone to adopt irrespective of their religions, caste, race and sex.
- (b) It provides for adoption by order of district court.
- (c) It seeks to provide necessary safeguards to prevent unsuitable adoptions and adoptions with mercenary or immoral objects and to ensure that adoption of a child is allowed *only when it is in the best interest of the child*.
- (d) It permits the adoption of any child (a person who has not completed 15 years of age) and who is not already adopted or married.
- (e) It permits, subject to certain qualifications and restrictions, any person of sound mind who has completed the age of 25 years to adopt a child.
- (f) It makes suitable provisions as to consent of the parents of the child to be adopted and of the institutions, if any, taking care of the child.
- (g) It seeks to equate as far as possible the status, rights and obligations of an adopted child with that of a child born in lawful wedlock.
- (h) It makes provisions for the protection of adopted children who are neglected or cruelly ill-treated or exploited or exposed to pernicious influences.
- (i) It make provisions as the licensing and supervision of institutions desiring to make arrangements for adoption of children.

3. The Bill seeks to achieve the above objectives.

M.A. BABY.

FINANCIAL MEMORANDUM

Clause 14 of the Bill makes a special provisions for protection of an adopted child. Sub-clause (1) (ii) of that clause enables the State Government to authorise an officer to report to the district court in respect of an adopted child who needs special protection.

Clause 15 of the Bill *inter alia* relates to the appointment of a licensing authority by the State Government. The State Government in respect of a Union territory is the Central Government. No additional expenditure will, however, be involved in regard to the appointment of such officers as existing officers of the Government have to be appointed for those purposes. But some recurring office expenditure of a negligible nature may be involved. The exact amount of such expenditure would depend upon the number of applications for licences, the number of licences granted and the action to be taken in relation thereto, but such expenditure is not likely to exceed Rs. 50,000. per annum for each Union territory.

The Bill does not involve any expenditure of a non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 18 of the Bill empowers the Central Government to make, after consultation with the Supreme Court, rules for carrying out the purposes of the Act; the matters in respect of which rules may be made relate *inter alia* to the form and the manner in which applications may be made under the Act; the manner in which consent may be given to the adoption of a child; the procedure to be followed on hearing applications for adoptions including the circumstances in which and the extent to which such applications may be heard and determined otherwise than in open court; the care and custody of children awaiting adoption; the form and particulars of an application for a licence in respect of an institution.

As the various matter in respect of which rules may be made under the clause relate to matters of form, procedure or detail, the delegation of legislative power is of a normal character.

V.S. RAMA DEVI,
Secretary-General.